

REMARKS

Claims 1-10 appear in this application for the Examiner's review and consideration. In response to the Examiner's restriction requirement, applicants provisionally elect the invention of the Group I, claims 1-6, for prosecution in this application. Accordingly, applicants expressly reserve the right to file divisional applications for the claims of Group II, claims 7-10 prior to issuance of this application.

In addition, applicants respectfully request that the Examiner withdraw the restriction requirement so that Groups I and II are examined together. The claims in these groups all are drawn to azithromycin degradation products (Group I) and to methods of purifying azithromycin (Group II). Indeed, election of Group I (concerning azithromycin degradation products) would necessitate a search of subject matter of Group II (concerning methods purifying azithromycin). For this reason, the Examiner's distribution of claims in separate groupings is not based upon any undue searching burden, since the subject matter of the other group must be reviewed in order to determine whether the claims of Group II are patentable.

The M.P.E.P. § 803 states:

If the search and examination of an entire application can be made without serious burden, the examiner >must< examine it on the merits, even though it includes claims to distinct or independent inventions (emphasis added).

Applicants respectfully remind the Examiner that every requirement to restrict has two aspects: (a) the reasons (as distinguished from the mere statement of conclusion) why the inventions *as claimed* are either independent or distinct; and (B) the reasons for insisting upon restriction therebetween. MPEP 808 (8th Ed. 2001). The particular reasons relied on by the Examiner for holding that inventions as claimed are independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. MPEP 816 (8th Ed. 2001).

There is not a "serious burden," because all groups of claims are directed to azithromycin, degradation products thereof, and methods of purifying azithromycin. Thus, a search of the subject matter for one set of claims can be carried out at the same time for the other set of claims.

Thus, in view of M.P.E.P. § 803, all the subject matter in Groups I-II should be examined together. Even, if the subject matter of these groups are distinct inventions, it would not be a "serious burden" on the Examiner to search these groups in this application.

Indeed, as applicants have explained above, the burden of searching these groups together would be no greater than that for Group I alone.

In summary, applicants have demonstrated that the subject matter of the claims of Groups I-II should be examined in the same application. Applicants request, therefore, that the restriction requirement be withdrawn and that all of claims 1-10 be searched and examined together.

Moreover, applicants are not aware of any references which teach the presently claimed products. For this reason, applicants submit that all claims are not in condition for allowance, early notice of which would be appreciated.

If any outstanding issues remain, the examiner is invited to telephone the undersigned at the telephone number indicated below to discuss the same. No fee is believed to be due for the submission of this response. Should any fees be required, please charge such fees to Kenyon & Kenyon, LLP Deposit Account No. 11-0600.

Respectfully submitted,

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